Petition

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IN THE SUPREME COURT OF THE UNITED STATES

THE 1981-82 TERM

RUTH FRICK RICE,

PETITIONER

VS.

THE PRESIDENT AND FELLOWS

OF HARVARD COLLEGE,

RESPONDENTS

A SECOND PETITION FOR A

WRIT OF CERTIORARI

TO THE U.S. COURT OF APPEALS

FOR THE FIRST CIRCUIT

PETITIONER PRO SE:

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IN THE SUPREME COURT OF THE UNITED STATES

THE 1981-82 TERM

RUTH FRICK RICE, PETITIONER VS. THE PRESIDENT AND FELLOWS OF HARVARD COLLEGE, RESPONDENTS	A SECOND PETITION FOR A WRIT OF CERTIORARI

QUESTIONS

The questions presented here for review include the following:

1. Is a financial aid program such as work-study sufficient federal funding to invoke federal jurisdiction under 20 U.S.C. Section 1681?

2. Is Harvard University subject to federal court jurisdiction under 42 U.S.C. Section 1983?

3. Can a corporation be the sole defendant party under 42 U.S.C. Section 1985(3)?

4. Does a beneficiary have standing in diversity jurisdiction to sue a public charity such as the President and Fellows of Harvard College?

The parties in this case are Ruth Frick Rice, the President and Fellows of Harvard College(a corporation), and the President and Fellows of Harvard College (a "John Doe" proceeding). At no time have the identities of the Fellows of Harvard College been revealed to the students or alumni/ae in any publication, official or otherwise. See, e.g., Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S Ct. 1999, 29 L. Ed. 2d 619 (1971).

Since the oral argument of this case in the First Circuit Court of Appeals, it is apparent that the holding in Krohn v. Harvard Law School, 552 F. 2d 21 (1st Cir. 1977), depends on an act of the legislature(the General Court)of Mass. called AN ACT To provide for the Separation of the State from Harvard and Amherst Colleges (1854)(appended). Inasmuch as this petition calls into question the constitutionality of that act, the petitioner, pursuant to 28 U.S.C.S. Section 2403(b), has caused to be served upon the Attorney General of the Commonwealth of Massachusetts three copies of this petition. Up until now, no court has certified such fact to the Attorney General of Massachusetts, since the basis for the decision of the U. S. Court of Appeals for the First Circuit was unclear.

OPINIONS

The official citation of the opinion issued by the Court of Appeals for the First Circuit is 663 F.2d 336. [The opinion is appended to this petition.] The memorandum opinion issued by the District Court is unpublished. [That opinion is, also, appended, hereto.]

JURISDICTION OF THE U. S. SUPREME COURT

The judgment for which review is sought was issued on November 2, 1981, by the Court of Appeals for the First Circuit. Petitioner is unaware of the time of entry. Petitioner finds support for an assertion of jurisdiction in this Court under 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS: AND RULES

The provisions of the U.S. Constitution which are violated in this case include Article I, Section 10, Clause [1]; Article III, Section 2, Clause [1], and Amendments I and XIV. The provisions in the Massachusetts Constitution which are of concern here are Chapter V, Section I, Articles I-III; also, in the 1821 Constitution of that state, Article Ninth of the Articles

of Amendment; and the same provisions in the original constitution of the Commonwealth of Massachusetts.

The federal statutes here in question include 28 U.S.C. Section 1332, 20 U.S.C. 1681, 42 U.S.C. Section 1983 and 1985(3). Also, those federal statutes found at 28 U.S.C. 1254(1), 42 U.S.C. Section 1988, 5 U.S.C. Section 552(a)(and reg. 45 C.F.R.5b.2(c)).

The Federal Rule of Appellate Procedure 1(b) is involved as is the First Circuit Rule 8(a).

The state statute whose constitutionality is called into question is an unpublished so-called private act of the Massachusetts legislature(the General Court)called AN ACT To provide for the Separation of the State from Harvard and Amherst Colleges(1854).

All of the above provisions, statutes, acts, and rules are appended hereto.

STATEMENT OF THE CASE

The petitioner is a June, 1980, graduate of Harvard Law School. At graduation exercises, petitioner discovered that a disproportionate

amount of male students had received honors which are awarded for a B+ or better average whole most of the women were on the bottom of the class. Between 51-53% of the men were awarded honors while only 18-19 of the women were awarded such honors. Since women comprise only about 20-27% of the classes at Harvard Law School, they are as well or better qualified than the men.

In Petitioner's circle of friends, it was apparent that those people with feminine handwriting or those who used feminine modes of expression were doing considerably less well than most of the men with whom petitioner was acquainted. Also, petitioner was aware that professors were provided with lists of names, grades, and student numbers before grades were available to the students. A professor told the petitioner that the purpose of the lists was to correct clerical errors in grading. Petitioner still remains

mystified as to how names help in the correction of clerical errors, but petitioner saw many of those "clerical errors" being corrected in that same professor's office.

It was not until commencement honors were published, however, that it became apparent that what were for the petitioner isolated incidents were actually a systematic exclusion of women from the opportunity to receive high grades in proportion to the other members of the class.

It was impossible for the petitioner to find out about the other 550 members of the Class of 1980 before graduation since those federal regulations promulgated with regard to work-study funding and the Privacy Act of 1974 prevent access to students' records or the publishing of same except under well-defined exceptions.

The students were, however, encouraged by their professors to submit their grade-

point averages to prospective employers and the petitoner had included her then B- average on all her resumes.

Petitoner, the mother of three sons who accompanied her to law school during school terms, was unable to find lucrative term-time employment with Boston law firms due to her grades. The petitioner, also, spent considerable amounts of time finding legal employment after graduation and has now the beginnings of a practice in Phila.

At all times, petitioner has been a citizen of the Commonwealth of Penna. This fact is included in Section I of the Complaint in this case(which is available to the Court in certified copies sent up for an earlier petition on a colateral order). The petitioner's assertion of diversity jurisdiction has never been challenged by the respondents or by the district court or the court of appeals, yet, they have ruled that my claim in equity is a pendent claim rather than in diversity. See, Appendix.

Certianly, at the time of the commencement of this case which was in October, 1980, there can be no question as to diversity since petitoner had given up her apartment in Massachusetts in June of that year.

Petitioner has much else to complain about at the hands of the President and Fellows of Harvard College. Petitioner participated on both the library and food committees of the law school but was denied official recognition for her work by the then Dean of the Harvard Law School on the basis that one student could not be on two committees. Petitioner suggested that more than two students should be on each administrative committee and that students should be allowed to sit on more than one committee. The Dean took Petitioner's advice but named a male student, Michael Smith, to two committees. The Dean's refusal to honor the petitoner by approving her membership to any committee while at the same time approving the memberhship of a male student to two

committees was based on a sexual discriminatory animus which pervades the acts of the faculty of the law school. The faculty of the law school administer the school through the aforementioned administrative committees yet there is only one female professor out of some 65-70 professors. (See.the Partial Transcript which includes the testimony of Assistant Dean Mary Upton.)

Petitioner and her family suffered great hardship through the failure of fianancial aid to process her timely application for financial aid and through the delay in approving work-study funds for the benefit of the petitioner. This callous disregard for the welfare of petitioner even extended to withholding and diverting the loan proceeds from a note until the Petitioner complained to the Department of Health, Education and Welfare.

Such neglect of students is of general applicability. Those facilities used exclusively by students for recreation, study,

and interviewing, including Holmes Hall and Harkness Commons are kept in a state of disrepair and unkemptness. A large unique classroom at the law school was converted into storage space for the library despite the scarcity of sufficiently large classrooms to accomodate the large classes at the law school. The confines of the law school are overly built despite the existence of property available for purchase or condemnation on two sides of the law school. Flu epidemics and other sickness is rampant at Harvard Law School due to the close confines, lack of ventilation, and the large size of the classes. Petitioner was forced to sit on the floor in an overcrowded class right after a bout with the flu. Petitioner was unable to attend further classes that semester because of a reoccurence of the flu.

The neglect of students even extends to the maintenance of such equipment as computer terminals necesaary to complete curse work--these terminals were not in operating condition when the petitioner tried to use them in the spring of 1980.

Petitioner asserts standing in diversity jurisidction to pursue her equitable claims of breach of fiduciary duty sufficient to constitute a forfeiture of the charter(annexed to the Complaint). Petitioner's claims as a beneficiary who has been directly injured are different than those of the public interest as defended by the Attorney General of the Commonwealth of Massachusetts. Such public policies as those against restraints on alienation make it impossible for the attorney general to adequately represent this petitioner in court. The judicial power of federal courts as defined in Article III extends to all cases arising under law and equity in federal jurisdiction such as diversity jurisdiction so the petitioner has a constitutional guarantee based on the privileges and immunities of national citizenship to prosecute her own case in a federal court.

Petitioner, also, asserts the rights of federal jurisdiction under 42 U.S.C. Section 1983 by reason of the inextricable

involvement of the Commonwealth in the government and administration of Harvard University. The state's rights as defined in its constitution(appended)make it impossible for the school to successfully function administratively without the involvement of the state. The very fact that by-laws have never been enacted or the charter amended without an act of the legislature supports this conclusion. The acts which purports to separate the stae and school is unconstitutional as applied as a bill of attainder. The beneficiaries, potential and actual, are confronted by the express involvement as defined in the constitution but are deprived secretly of that very involvement on their behalf.

Petitoner also, asserts jurisdiction under 42 U.S.C. Section 1985(3) since a corporate status cannot as a matter of policy be allowed to conceal and protect a conspiracy by its members.

Lastly, petittioner asserts jurisdiction under 20 U.S.C. Section 1681 which forbids sex discrimination in "education programs" which receive federal funding. Petitioner had a work-study job at the Mass. Superior Court Law Clerks' office during the Spring of 1979. Petitioner was unable to return to this job due to the delay in the confirmation of her work-study status. (See, Appendix and 42 U.S.C. Section 2751.)

"Education program" as used in 20 U.S.C. Section 1681 is in lieu of such descriptions as "degree program","certificate program", and "course of study".

REASONS FOR REVIEW

All of the proceedings in this case are tainted by such bad faith as to amount to a denial of due process. As a result of the judgments of the lower courts, petitioner must conclude that she apparently has no rights in a court of law and that the constitution of this country does not apply to her, or for that matter, that country's law either.

Appendix

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I, SECTION 10, CLAUSE [1]

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

ARTICLE III, SECTION 2, CLAUSE [1]

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and

Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF MASSACHUSETTS

Chapter V

The University at Cambridge, and Encouragement of Literature, etc.

Section I

The University

Art. I. Harvard College

Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in church and state: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of GOD, the advantage

of the Christian religion, and the great benefit of this and the other United States of America--it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have or are entitled to have, hold, use, exercise and enjoy: and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Art. II. All Gifts, Grants, etc., Confirmed

And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and

fellows of Harvard College, or to the said college, by some other description, under several charters successively: it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

Art. III. Who Shall be Overseers; Power of Alteration Reserved to the Legislature

[And whereas, by an act of the general court of the colony of Massachusetts Bay passed in the year one thousand six hundred and forty-two, the governor and deputy-governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described,

constituted the overseers of Harvard College: and it being necessary, in this new constitution of government to ascertain who shall be deemed successors to the said governor, deputy-governor and magistrates; it is declared, that the governor, lieutenant governor, council and senate of this commonwealth, are and shall be deemed their successors, who with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College; provided, that] nothing herein shall be construed to prevent the legislature of this commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage and the interest of the republic

of letters, in as full a manner as might have been done by the legislature of the late Province of the Massachusetts Bay.

CONSTITUTION OF MASSACHUSETTS (1821)

ARTICLES OF AMENDMENT

ARTICLE NINTH

If at any time hereafter any specific and particular amendment or amendments to the constitution be proposed in the General Court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the General Court then next to be chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, then

it shall be the duty of the General Court to submit such proposed amendment or amendments to the people, and if they shall be approved and ratified by a majority of the qualified voters voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this Commonwealth.

Chapter V

The University at Cambridge, and Encouragement of Literature, Etc.

SECTION I

The University

Art. III And whereas by an act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred and forty-two, the governor and deputy governor, for the time being, and all the magistrates of that jurisdiction, were, with the President, and a number of the clergy in the said act described,

constituted the Overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy governor, and magistrates; it is declared, that the governor, lieutenant governor, council and senate of this Commonwealth, are, and shall be deemed, their successors; who, with the President of Harvard College, for the time being, together with the ministers of the Congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard College; provided, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from

making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.

ORIGINAL CONSTITUTION OF MASSACHUSETTS

CHAPTER V.

THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE & c.

Section I.

THE UNIVERSITY.

I. WHEREAS our wise and pious ancestor so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in Church and State: And whereas the encouragement

of arts and sciences, and all good literature, tends to the honor of GOD, the advantage of the christian religion, and the great benefit of this and the other United States of America--It is declared, That the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: And the same are hereby ratified and confirmed unto them, the said President and Fellows of Harvard College, and to their successors, and to their officers and servants, respectively forever.--

II. And whereas there have been at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College

in Cambridge, in New England, or to the president and Fellows of Harvard College, or to the said College, by some other description, under several charters successively, IT IS DECLARED: That all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the President and Fellows of Harvard-College, and to their successors in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.--

III. [And whereas, by an Act of the General Court of the Colony of Massachusetts Bay, passed in the year one thousand six hundred & forty-two, the Governor and Deputy-Governor, for the time being, and all the magistrates of that jurisdicion, were, with the President, and a number of the clergy in the said act described, constituted the overseers of Harvard College: And it being necessary, in this new Constitution of Government to ascertain

STATUTES

28 U.S.C. Section 1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;...

28 U.S.C. Section 1332:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between--

(1) citizens of different States:...

28 U.S.C. Section 1652;

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

who shall be deemed successors to the said Governor, Deputy-Governor and magistrates: IT IS DECLARED, that the Governor, Lieutenant Governor, Council and Senate of this Commonwealth are, and shall be deemed, their successors, who with the President of Harvard College, for the time being, together with the Ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said Act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the Overseers of Harvard-College: PROVIDED, that] nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said University, as shall be conducive to its advantage, and the interest of the republic of Letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay.--

5 U.S.C. Section 552(a)(2)(as amended through 1978):

...To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying detials when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction.

REGULATIONS

45 C.F.R. Section 5b.2(c):[retrictions to access agency records include]participants in work-study or training programs.

STATUTES CONTINUED

42 U.S.C. Section 2751:

The purpose of this part is to stimulate and promote the part-time employment of students, particularly students with great financial need, in eligible institutions who are in need of the earnings from such employment to pursue courses of study at such institutions.

20 U.S.C. Section 1681:

(a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students

of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the militar services of the United States, or the merchant

marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(6) This section shall not apply to membership practices--

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 [26 USCS Section 501(a)], the active membership of which consists primarily of students in attendance at an institution of higher education, or (B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any

higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

42 U.S.C. Section 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. Section 1985(3):

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constitutued authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do,

or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C.S. Section 1988:

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this title, and of title "CIVIL RIGHTS", and of Title "CRIMES", for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies

and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty...

RULES

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 1(b):

These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

RULES OF THE FIRST CIRCUIT

Rule 8(a):

Within 10 days of the date of the docketing of the appeal, the appellant shall file with the court a statement specifying (1) the party or parties taking the appeal, (2) the judgment, order or part thereon appealed from and the date entered, and (3) the basis for this court's appellate jurisdiction, together with supporting statutory references and/or other appropriate citations. (Amended effective Aug. 1, 1979)

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Fifty-Four.

AN ACT

To provide for the Separation of the State from Harvard and Amherst Colleges.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SECT. 1. Whenever, during the present year, the Corporation of Harvard College shall cause to be raised, by subscriptions and donations, a fund of two hundred thousand dollars, which shall be forever applied to the establishment of at least one hundred free scholarships in said college, each scholarship yielding one hundred dollars a year, to which as many of the youth of the Commonwealth, of the requisite qualifications, shall, from time to time, be admitted, without regard to the political or religious views entertained by them

the governments of these two colleges, and to place herself in the same attitude towards them all. In the same way, the act of 1853, establishing the State Scholarships, places all the colleges on an equal footing. With the forty-eight State Scholarships, and the one hundred and ten contemplated in one of the accompanying bills, the provision for gratuitous collegiate education in this Commonwealth will be most liberal, and will be attended by the most satisfactory results.

What is further wanted, is to elevate the standard of education, by establishing a system of intercommunication among the colleges through the State. In other words, what the Board of Education has done for the common schools, should be achieved by some appropriate agency for the colleges. A board of collegiate examiners should be established, who should annually visit and examine the colleges, and make reports in relation thereto, in detail, to the legislature. This plan is highly approved by the presidents of all the colleges, as one that would be beneficial to them and to the State. A system like this is pursued in New York by the Regents of the University, and meets with great favor.

The majority of the committee do therefore report the two accompanying Bills.

G. WASHINGTON WARREN, *Chairman.*

or their parents; and whenever it shall be satisfactorily proved to the governor, that said fund has been raised and set apart for that purpose, then the governor shall cause proclamation to be made of this fact; and thereupon, the connection which now subsists on the part of the State with Harvard College, in the government thereof, shall be dissolved, and the board of overseers of said college shall be hereafter constituted as is provided in the following section.

Sect. 2. The governor and other officers of the Commonwealth, shall cease to be members *ex officiis*, of said board, and the graduates and other persons who may have received any of the honorary degrees of said college, may, as an association of alumni, at conventions to be held annually on the day next preceding, or the day next succeeding the day of commencement of said college, elect five overseers of said board, to hold their offices for the term of six years, and may also fill any vacancies then existing in any of the other classes of said board, in the manner now provided by law for the senators and representatives to elect said overseers. The terms of the different classes of said board shall be prolonged for six months, or until their several vacancies shall be filled; and the first meeting of the alumni for this purpose shall be held in the year 1855, and shall be notified by the president of the college. The alumni at any annual meeting may adopt by-laws and rules of proceeding for the government of their association. The board of overseers, thus constituted, shall have all the powers and privileges which are now vested in said board, and so much of the existing laws in relation to

Harvard College, or its board of overseers, as is inconsistent with this act, is hereby repealed.

Sect. 3. Whenever the trustees of Amherst College shall cause to be permanently established, ten scholarships of the like character to those provided for in the first section of this act, and the governor shall be satisfied that such is the fact, he shall in like manner proclaim the same, and thereupon, so much of the first section of the act to establish a college in the town of Amherst, passed on the twenty-first day of February, in the year 1825, which provides for the election of five trustees by the legislature, shall be repealed; and the remaining trustees shall be authorized to fill the vacancies in said board, as they may occur.

Sect. 4. The State Board of Education may adopt any general regulations they may see fit, as to the mode of selecting the candidates for the said scholarships, whenever the number of applicants of the requisite qualifications, shall exceed the number of scholarships that may be vacant.

United States Court of Appeals
For the First Circuit

No. 81-1139

RUTH FRICK RICE,
PLAINTIFF-APPELLANT,

v.

THE PRESIDENT AND FELLOWS
OF HARVARD COLLEGE,
DEFENDANT-APPELLEE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[HON. WALTER JAY SKINNER, *U.S. District Judge*]

Before
COFFIN, *Chief Judge*,
BOWNES, *Circuit Judge*,
CAFFREY,* *District Judge*.

Ruth Frick Rice, pro se.
John H. Mason, with whom *George Marshall Moriarty*, and *Ropes & Gray* were on brief, for appellee.

November 2, 1981

BOWNES, *Circuit Judge*. Appellant Ruth Frick Rice appeals from an order of the district court dismissing her action against the President and Fellows of Harvard College. She brought suit under 42 U.S.C. § 1983, 42 U.S.C. § 1985(3) and 20 U.S.C. § 1681, claiming sex discrimination in the awarding of grades at Harvard Law School. She also brought a pendent state claim alleging breach of fiduciary duty by defendants-appellees in that they discriminated on the basis of sex and failed to maintain the facilities of Harvard Law School up to proper educational standards. As examples of such failure,

* Of the District of Massachusetts, sitting by designation.

she points to the conversion of a classroom for storage space, mismanagement of the work-study program, overcrowding in classrooms, and the inoperability of the LEXIS computer.

Rice alleges that, despite the fact that exam papers are identified only by a number, women are deliberately given lower grades. She claims that the cloak of anonymity is pierced in two ways. One, those papers containing feminine handwriting and feminine modes of expression are identified and downgraded. Two, after the professors have turned in their grades, they are provided with a list of students' names, their corresponding identification numbers and their grades. At that point, appellant asserts, the grades can be changed by the professor on the basis of clerical error in the original grades. The student, of course, has no knowledge of her original grade and does not know that a change has been made. It is plaintiff's contention that many clerical error changes are in reality changes to a lower grade based on the fact that the student is a female.

Appellant's § 1983 claim of deprivation of her civil rights was properly dismissed. In *Krohn* v. *Harvard Law School*, 552 F.2d 21 (1st Cir. 1977), we held that Harvard is not a public institution and is not sufficiently intertwined with the Commonwealth of Massachusetts so as to meet the "state action" requirement for a § 1983 cause of action. Rice seeks to reargue to this court the "historical debate" concerning the founding of Harvard which we found unpersuasive in *Krohn*. *Id.* at 23. We see no reason to overrule our prior decision and, therefore, affirm the dismissal of the § 1983 claim.

Rice also complains that in awarding lower grades to female students the faculty of Harvard Law School unlawfully conspired to deprive her of her civil rights in violation of 42 U.S.C. § 1985(3). The fatal defect in this claim is that she has sued only the President and Fellows of Harvard College, which is a single corporate entity and, therefore, unable to conspire with itself in violation of § 1985(3). *Dombrowski* v. *Dowling*, 459 F.2d 190, 196 (7th Cir. 1972); *Williams* v.

Northfield Mount Hermon School, 504 F. Supp. 1319, 1328 (D. Mass. 1981); *Zentgraf* v. *Texas A & M University*, 492 F. Supp. 265, 272-273 (S.D. Tex. 1980). *See Cole* v. *University of Hartford*, 391 F. Supp. 888, 892-894 (D. Conn. 1975). Although she alleged "across-the-board" discrimination by the faculty, Rice named no individual faculty members as defendants. Her conspiracy claim was, therefore, properly dismissed by the district court.

The third federal statute on which appellant seeks to base a cause of action for sex discrimination is § 901 of Title IX of the Education Amendments of 1972, codified at 20 U.S.C. § 1681 *et seq.* Section 1681(a) provides in pertinent part: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . ."

Rice would have us interpret "education program" in this case to mean Harvard Law School, thereby permitting her to invoke the protection of Title IX. Such an interpretation is essential to her claim, as she has not specified any federally funded program in which she suffered discrimination because of her sex. Her argument is that, by virtue of the Law School's status as a recipient of federal funds through such specific programs as work-study, Title IX applies whenever the School discriminates in *any* area, regardless of whether the discrimination occurs in a program that is federally funded.

We have previously had occasion to construe the scope of Title IX in another context in *Islesboro School Committee* v. *Califano*, 593 F.2d 424 (1st Cir. 1979). As we did in *Islesboro*, we begin with an examination of the plain language of the statute.

"Education program or activity" is not expressly defined in Title IX. However, the statute does contain a definition of "educational institution" at 20 U.S.C. § 1681(c), which provides:

> For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional or higher education, except that in the case of an eductional institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

Thus, according to the plain meaning of the statute, Harvard Law School is an educational institution under Title IX. The precision with which Congress defined educational institution strongly indicates that it did not equate education program with educational instituton. It obviously recognized that an educational institution offers a number of education programs and activities. In light of § 1681(c), the only meaningful interpretation of § 1681(a) is that it prohibits sex discrimination in a federally funded education program offered by an eductional institution.[1]

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[1] The legislative history of 20 U.S.C. § 1681(a) on this issue is illuminating, albeit scant. When originally introduced by Senator Bayh in 1971, the section read as follows:

> No person in the United States shall, on the ground of sex, be excluded from participation in, be denied the benefits of or be subject to discrimination under any program or activity conducted by a public institution of higher education, or any school or department of graduate education, which is a recipient of Federal financial assistance for any education program or activity. . . .

117 Cong. Rec. 30156 (1971). This indicated an institutional approach to the problem of sex discrimintion, as urged by the appellant. However, this language is in stark contrast to the substituted final version of § 1681(a) which is aimed at specific programs. *Othen* v. *Ann Arbor School Board*, 507 F. Supp. 1376, 1380-1383 (E.D. Mich. 1981). Thus, the legislative history evinces Congress' deliberate choice of a programmatic approach rather than an institutional approach to combating sex discrimination in education. *Id.*

The programmatic approach is also supported by the language of 20 U.S.C. § 1682, which authorizes enforcement of § 1681. The primary enforcement mechanism contemplated by this section is termination of federal funds, but such termination is limited to the particular program in which noncompliance is found.

By alleging merely that Harvard Law School receives federal funds for its work-study program, without alleging sex discrimination in the School's handling of that program, Rice has failed to bring herself within the protection of Title IX.[2] *See Romeo Community Schools* v. *U.S. Department of HEW*, 600 F.2d 581, 584 (6th Cir. 1979); *Othen* v. *Ann Arbor School Board*, 507 F. Supp. 1376, 1380 (E.D. Mich. 1981).

Finally, we turn to appellant's pendent state claim against Harvard, that the corporation breached its fiduciary duty to her as a beneficiary of a charitable trust. The district court dismissed this claim, holding that Rice had no standing to sue in light of Mass. Gen. Laws Ann. ch. 12, § 8, which commits to the Attorney General the duty of protecting charitable trusts. The district court relied on *Ames* v. *Attorney General*,

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[2] In support of her institutional theory, Rice cites the Supreme Court's decision in *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979), in which the Court found a private right of action under Title IX. There, a female applicant who was denied admission to the University's medical school sued on the ground of sex discrimination. In footnote 2 at 680-81, the Court noted that the medical school received federal aid, without specifying which particular program was funded. The Court did not address the issue of the requisite nexus between the specific funded program and the alleged discrimination. We think it reasonable, however, in a case involving discrimination in admission to an educational institution that a plaintiff not be required to allege that a particular funded program discriminated against her. One who is discriminated against in seeking admission is denied access to all educational programs and activities within an institution, and the entire body of programs within the school is tainted. *Othen* v. *Ann Arbor School Board*, 507 F. Supp. at 1387-88; *Grove City College* v. *Harris*, 500 F. Supp. 253, 268 (W.D.Pa. 1980). *Contra*, *Stewart* v. *New York University*, 430 F. Supp. 1305 (S.D.N.Y. 1976) (female denied admission to law school failed to state a claim under § 1681 where no allegation of federal funding of admissions program).

As this case does not present the situation of alleged sex discrimination in admissions, we do not decide this issue. We hold only that once admitted to an educational institution, allegations of discrimination in violation of 20 U.S.C. § 1681 must involve discrimination by the particular funded education program within that institution.

332 Mass. 246, 124 N.E.2d 511 (1955), which held, "The duty of taking action to protect public charitable trusts and to enforce proper application of their funds rests solely upon the Attorney General as the representative of the public interests." *Id.*, 124 N.E.2d at 513.

We do not think that the district court should have determined appellant's standing under Massachusetts law. She contends that her private interest as a law school graduate beneficiary is separate and distinct from that of the general public and may, therefore, be vindicated through private action. There is dicta in *Ames* v. *Attorney General*, 124 N.E.2d at 513, 515, and in *Dillaway* v. *Burton*, 256 Mass. 568, 153 N.E. 13, 16 (1926), that might be interpreted as support for her claim. It is clear, however, that the pendent state claim should have been dismissed, under the authority of *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 726 (1966): "Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well."

The opinion of the district court is affirmed as to the federal claims. The case is remanded for dismissal of the pendent state claim without reaching the question of standing under Massachusetts law.

Adm. Office, U.S. Courts – Addison C. Getchell & Son, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

MEMORANDUM AND ORDER ON MOTION TO DISMISS

(Unpublished)

February 3, 1981

SKINNER, D.J.

The plaintiff's complaint has two branches: breach of fiduciary duty and violation of her civil rights by reason of sex discrimination.

The civil rights claim is based on an allegation that the Harvard Law School faculty purposely discriminates against women in the awarding of grades. In support, she points to the very low percentage of women on the Harvard Law Review, appointment to which is reserved for the highest ranking students, and the low percentage of female students who graduated with honors in 1980. In its motion to dismiss, the corporation points out that the grading system provides for anonymity through coded exam papers, and that the plaintiff has not negated other factors which

might influence the female students' grades. These are matters of defense. In my opinion, the facts alleged by the plaintiff are enough to state a prima facie case of sex discrimination if they fall within the scope of any of the statutes which create a private right of action for sex discrimination. Identification of a statutory basis for this suit is the plaintiff's major problem.

She relies on 42 U.S.C. Section 1983, 42 U.S.C Section 1985(3) and 20 US.C. Section 1681. 42 U.S. Section 1983 requires that the defendant be acting under color of state law. The Court of Appeals has held that the President and Fellows of Harvard College and the Harvard Law School do not act under color of state law, even though Harvard College was originally founded by the Massachusetts Bay Colony, and what passes for its charter is imbedded in the Constitution of the Commonwealth of Massachusetts. Krohn v. Harvard Law School, 552 F.2d 21 (1st Cir. 1977). 20 U.S.C. Section 1681 prohibits sex discrimination in educational programs and activities receiving

federal financial assistance. The only such program at Harvard Law School referred to in the complaint is a work-study program. It is not alleged that there was any sex discrimination in the administration of this program, nor does it appear that the plaintiff was even a member of this program.

What is left is 42 U.S.C. Section 1985(3), which prohibits any conspiracy to deprive a person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, and creates a private right of action to those injured by acts done in furtherance of such a conspiracy. A conspiracy to discriminate in the awarding of grades by a private institution is probably not within the scope of Secton 1985(3). Cf., Cohen v. Illinois Institute of Technology, 524 F.2d 818 (7th Cir. 1979). Even assuming that a theory of recovery could be devised in favor of the victim of such a conspiracy, an absolutely essential element of the private right of action is the existence of a conspiracy.

The President and Fellows of Harvard Coll constitute a corporation. That is the officia name of the corporation which owns and operate Harvard University, including its Law School. That designation also describes the small governing board of the University which acts as the board of directors of the corporation. The members of the faculty are not "Fellows" as alleged by the plaintiff. The President and Fellows do not act individually but as a corporate entity. The plaintiff has sued a unitary defendant which cannot conspire with itself. Dombrowski v. Dowling, 459 F.2d 190, 196 (7th Cir. 1972).

The faculty of the Harvard Law School are all employees of the single corporation known as the President and Fellows of Harvard College, and ordinarily the employees of a single corporation are not considered to have conspired together when they collectively carry out the work of their employer. Dombrowski v. Dowling, supra. Cf., e.g.,

Harvey v. Fearless Farris Wholesale, Inc., 589 F.2d 451, 455, n.7 (9th Cir. 1979); Giant Paper and Film Corporation v. Albemarle Paper Co., 430 F. Supp. 981, 985 (S.D.N.Y. 1977). Possibly a theory could be developed under which a law school faculty could be distinguished from ordinary corporate employees by reason of their individual autonomy, but the opportunity is not presented in this case. None of the Harvard Law faculty have been named as defendants.

It is rather doubtful if there is any means of redress for the plaintiff under federal statutes, although I have suggested some possibilities above. In any case, the present complaint fails to state a cause of action under any of the federal statutes cited by the plaintiff.

The plaintiff also seeks redress for alleged sex discrimination on the theory that the defendant owed her a fiduciary duty as the beneficiary of a public charity. This claim for relief would arise under the law

of Massachusetts. As I understand that law, the vindication of the rights of beneficiaries of public charities is committed by statute to the Attorney General of the Commonwealth. Mass. Gen. Laws c.12, Section 8. His prerogative is exclusive, and an action to enforce the fiduciary duties of a public charitable corporation may not be brought by individual beneficiaries. Ames v. Attorney General, 332 Mass. 246(1955).

The remainder of her allegations of breach of fiduciary duty charge the defendant with failure to maintain the facilities of the Harvard Law School at a proper standard. While the defendant has a fiduciary duty not to abandon the charitable and public purposes for which it was formed, it has a very broad discretion as to the allocation of its resources. Cr., Attorney General v. President and Fellows of Harvard College, 350 Mass. 125 (1966). The minutiae of which the plaintiff complains are probably not actionable, but in any case, under the

Massachusetts law described in the preceding paragraph, the plaintiff has no standing to sue.

In accordance with the foregoing, I rule that this complaint does not state a claim upon which relief can be granted. The defendant's motion to dismiss under Rule 12(b)(6) is ALLOWED.

WALTER JAY SKINNER
UNITED STATES DISTRICT JUDGE